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J.1 Introduction

Trustee coordination is crucial to an efficient and effective NRDA process because of the need to address shared trustee interests in natural resources and services injured by incidents. OPA prohibits double recovery of damages, which strongly suggests that, where multiple trustees are involved in an incident, they actively coordinate their activities as early in the process as possible.

J.2 Incentives for Coordination

Incentives for coordination include:

- Access to funding - requests for reimbursement of the costs of initiating a NRDA from the Fund require that trustees attempt to coordinate their assessments and funding requests;
- Conflict resolution - lack of coordination among the trustees or with the RPs will likely produce an adversarial, litigation-charged atmosphere. A joint trustee-RP effort will help resolve legal, administrative, and technical conflicts; and
- Pooling limited resources - a joint trustee-RP effort will allow the pooling of financial and human resources for more efficient and effective restoration planning and implementation. Trustees will benefit greatly if coordination procedures can be established well before an incident occurs. However, cooperative arrangements allowing for RP implementation of NRDA activities are subject to trustee oversight because of the trustees' fiduciary responsibility to the public.

J.3 Lead Administrative Trustee (LAT)

When conducting joint assessments under the OPA regulations, trustees must designate a Lead Administrative Trustee (LAT). The LAT serves as the contact for trustee interaction with response agencies, RPs, and the public, and provides general administrative support to the restoration process. The LAT's responsibilities may include:

- Scheduling meetings of the trustees;
- Preparing agendas and procuring space or other needs for the meetings;

- Acting as a central contact point for the trustee agencies involved in the incident;
- Liaison with the appropriate OSC or designee;
- Coordinating preassessment data collection and analysis as well as other activities;
- Establishing and maintaining records for the trustees; and
- Contracting with consultants or experts to assist in the NRDA.

During an incident, Preassessment Phase coordination will depend greatly upon the complexity of the incident and NRDA activities. An oil-specific NRDA team may be established with members who can participate throughout the NRDA process. The most complex conditions will require a multi-level structure, such as that that evolved during the EXXON VALDEZ NRDA. When many trustees are involved in a complex NRDA, the overall management of the NRDA may be directed by a Trustee Council. This council may be composed of senior representatives from each trustee entity. The Trustee Council makes the final decisions on the type of damage assessment to be conducted, studies needed to support the claims, and final damage claim. There may be a designated LAT for the Trustee Council. If a trustee must act before a LAT is designated or Council is formed, the trustee should inform the designated LAT of all activities performed in order to facilitate future coordination.

Under the Trustee Council, special committees may be formed to deal with various aspects of planned injury studies, such as QA, economics, data management, analytical chemistry, legal issues, and restoration. The number of disciplinary study committees depends upon the natural resources affected (e.g., there may be committees for birds, fisheries, oil trajectory and fate, etc.). Members of the committees should include the principal investigator of each study, trustee representatives specializing in the natural resource or service, and experts. Each committee should elect a committee leader who takes responsibility for calling meetings, finalizing the agenda, distributing documents, chairing the meetings, and settling disputes. Legal representatives from each trustee would form a Trustee Legal Committee which would operate at an organizational level immediately below the Trustee Council. Both the Trustee Council and Legal Committee should be involved in determining the final damage claim. During the Preassessment Phase, it is essential that these committees form to minimize duplication of effort. Such coordination is best achieved through pre-incident planning.

For NRDA of lesser complexity, the trustees may form a single team with representatives from each trustee agency, technical staff who are conducting the studies (i.e., both scientific and economic), legal staff from each trustee, and also could include peer reviewers, and possibly the RPs. A LAT should be designated with the responsibilities as outlined above. This NRDA team should meet as soon as possible after an incident. The NRDA team reviews and approves all NRDA activities and assigns specific individuals or agencies as the lead for each activity. *Ad hoc* working groups can form to address special topics, such as data management and QA.

The OPA regulations do not require that a LAT be a Federal agency. However, when more than one Federal trustee(s) is involved, the Federal trustees must select a Federal LAT if the trustees wish to access the Fund to initiate NRDA activities. Where appropriate, the trustees may designate co-LATs, consisting of a Federal LAT and the State, tribal, or foreign trustees. Trustees may also elect to provide for sequential LATs to cover different stages of the NRDA process.

The LAT should be selected by mutual agreement of the trustees. In designating a LAT, trustees may want to consider such factors as:

- Relative extent of jurisdiction over natural resources and services injured by an incident;
- Capability and willingness to conduct NRDA actions; and
- Sequence and duration of involvement in the incident or similar incidents.

J.4 Co-Trustee Responsibilities

Co-trustees should be prepared to participate fully in the NRDA process by:

- Participating in or conducting those studies or analyses for which they have special expertise or management authority;
- Making staff available to participate in other NRDA activities; in particular, to represent the trustee in decisions requiring co-trustee unanimity; and
- Committing financial resources.

Each trustee may limit this participation based on the extent of injury to its natural resources as well as legal and financial constraints.

J.5 Co-Trustee Agreements

Trustees should consider Memoranda of Understanding (MOUs) to formalize their co-trustee relationships. The MOU or similar agreements may be prepared either in anticipation of an incident or shortly after an incident. It is important that trustee agreements address, at a minimum the:

- Purpose of the agreement;
- Trustee participants;
- Trustee organization; and
- A decisionmaking process.

J.6 Coordination With Response Agencies

To the fullest extent practicable without interfering with response activities, natural resource concerns should be integrated with response activities before pursuing a NRDA. Trustees are strongly encouraged to coordinate natural resource NRDA activities, such as gathering ephemeral data related to an incident, with response actions. Mechanisms to coordinate response and trustee data gathering needs and processes may also be addressed in pre-incident planning.

J.7 Coordination With the RPs

Under OPA, trustees have the responsibility to determine appropriate actions to restore injured natural resources and services. However, the OPA regulations require trustees to invite the RPs to be full or partial participants in the NRDA process, whenever it can be achieved without compromise of the trustees' statutory obligations to act on behalf of the public trust.

J.8 Trustee-RP Agreements

Trustees and RPs should consider entering into agreements to facilitate their interactions and resolve any disputes during the assessment. To maximize cost-effectiveness and cooperation, trustees and RPs may develop a set of agreed-upon facts concerning the incident and NRDA. For example, stipulated facts might concern the types of natural resources and services injured, the extent of injury, or the most appropriate assessment procedures to determine injury and/or restoration needs, and how the results of the procedures used will be interpreted.

J.9 Coordination Among the RPs

While it is obviously not as easy to identify the mix of potential RPs that will participate in a given incident, there are issues that can be addressed in general terms by the potential RPs in advance that will enable them to enter the cooperative restoration process more efficiently and effectively. In an incident with a single well-identified RP, the ability to assess the situation, identify the appropriate course of action, and most effectively implement a cooperative response will be improved by pre-incident planning. In an incident with multiple potential RPs, the need for pre-incident planning is more apparent. In this latter situation, the potential RPs need to consider the efficacy of a cooperative restoration process and the terms under which they would consider entering into such a process.